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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER	
VALENTI, ANDREA M	
ART UNIT	PAPER NUMBER
3643	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/769,076	KRYSIAK ET AL.	
	Examiner	Art Unit	
	ANDREA M. VALENTI	3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *01 January 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-30,32,36-42 and 45-53* is/are pending in the application.

4a) Of the above claim(s) *1-25,36,37,39-42,45,46,48,49,51 and 53* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *26-30,32,38,47,50 and 52* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 26, 27, and 38 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,324,781 to Stevens.

Regarding Claim 26, 27, 38, Stevens teaches a colored mulch product (Stevens abstract line 2) consisting essentially of: a material comprising a fiber cellulose, clay, loam, sand, and/or a combination of same; a binding agent (Stevens Col. 2 line 2); and a dye and/or pigment (Stevens Col. 6 line 35). Stevens teaches a dye and that the dye indicates to a user environmental conditions of the soil where the mulch is placed. The mulch of Stevens includes both a dye and a fertilizer. Therefore, when the user sees the mulch color the user will known that mulch has been applied to that portion of soil along with a fertilizer i.e. that soil portion has been fertilized which is an environmental condition.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 26, 27, 28, 29, 30, 38, and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,324,781 to Stevens in view of U.S. Patent No. 6,019,062 to Lombard et al.

Regarding Claim 26, 28, 29, 30 and 50, Stevens teaches a colored mulch product (Stevens abstract line 2) consisting essentially of: a material comprising a fiber cellulose, clay, loam, sand, and/or a combination of same; a binding agent (Stevens Col. 2 line 2); and a dye and/or pigment (Stevens Col. 6 line 35). Stevens teaches a dye, but is silent on the dye **indicates** to a user environmental conditions of the soil where said mulch is placed; the dye **indicates** to a user the acidity of said soil; the dye **indicates** to a user the moisture content of said soil; or the dye **indicates** to a user the chemical content of said soil and it is an environmentally safe dye (Lombard abstract second to last line).

However, Lombard et al teaches a dye indicator i.e. a pH indicating dye for application to cellulosic material such as paper (Lombard Col. 2 line 1-5 and Col. 2 line 11-15; Col. 2 line 60-67). It would have been obvious to one of ordinary skill in the art to modify the teachings of Stevens with the teachings of Lombard at the time of the invention since the modification is merely an engineering design choice involving the selection of a known alternate dye selected for the known advantage of monitoring pH levels as taught by Lombard and is an environmentally safe dye as taught by Lombard (Lombard abstract).

Regarding Claim 27, Stevens as modified teaches the mulch comprising; nitrogen, phosphorous, and potassium fortifiers (Stevens abstract last line).

Regarding Claim 38, Stevens as modified teaches the mulch is the same or similar color of an actual plant, flower, fruit, or vegetable of a seed planted with the mulch (Stevens Col. 6 line 37).

Claim 52 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,324,781 to Stevens in view of U.S. Patent No. 6,019,062 to Lombard et al as applied to claim 26 above, and further in view Japanese Patent JP 01262735 A to Yanmar Agricult Equip Co LTD (Yamada).

Regarding Claim 52, Stevens as modified teaches a method of placing colored mulch on top of soil; changing the colors of the mulch based on the condition of the soil. Stevens is silent on adding chemicals to the soil based on the color of the mulch. However, it is old and notoriously well-known in the art of plant husbandry to observe and test soil conditions to see if they meet the desired parameters and to adjust the parameters when necessary. Yanmar teaches the general knowledge of one of ordinary skill in the art to add fertilizer when the pH is out of desired range (Yanmar abstract and Fig. 1 #2). General knowledge that the pH of a growing medium component determines the addition of fertilizer. It would have been obvious to one of ordinary skill in the art further modify the teachings of Stevens with the teachings of Yanmar at the time of the invention for the advantage of promoting healthy plant development. Examiner takes official notice that it is old and notoriously well-known to add fertilizer based on a pH of

the soil e.g. tomato plants prefer a certain acidity in the soil for healthy development so it is general practice to test the pH to determine if and how much fertilizer is needed.

Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,324,781 to Stevens in view of U.S. Patent No. 6,019,062 to Lombard et al as applied to claim 26 above, and further in view of U.S. Patent No. 5,734,167 to Skelty.

Regarding Claim 32, Stevens as modified teaches coloring the mulch, but is silent on the dye is florescent. However, Sketly teaches it is old and notoriously well-known to dye agricultural products with florescent dye allowing the mulch to glow in the dark (Skelty Col. 1 line 35-45). It would have been obvious to one of ordinary skill in the art to further modify the teachings of Stevens with the teachings of Skelty at the time of the invention since the modification is merely the selection of a known alternate coloring for the advantage of enabling safe night time agricultural operations as taught by Skelty (Skelty Col. 1 line 1-26).

Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,324,781 to Stevens in view of U.S. Patent No. 5,734,167 to Skelty.

Regarding Claim 32, Stevens teaches coloring the mulch, but is silent on the dye is florescent. However, Sketly teaches it is old and notoriously well-known to dye agricultural products with florescent dye allowing the mulch to glow in the dark (Skelty Col. 1 line 35-45). It would have been obvious to one of ordinary skill in the art to further modify the teachings of Stevens with the teachings of Skelty at the time of the

invention since the modification is merely the selection of a known alternate coloring for the advantage of enabling safe night time agricultural operations as taught by Skelty (Skelty Col. 1 line 1-26).

Claim 47 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,067,140 to Thomas in view of U.S. Patent No. 6,019,062 to Lombard et al.

Regarding Claim 47, Thomas teaches a colored mulch product (Thomas abstract) comprising: a material comprising a fiber cellulose (Thomas abstract first line), clay, loam, sand, and/or a combination of same; a binding agent (Thomas Col.1 line 30 “wetting agent” and Col. 4 line 35-41); and a dye and/or pigment (Thomas Col. 1 line 35) produced by a lifting and tumbling agglomeration operation (Thomas Col. 2 line 65-66. Thomas teaches adding fertilizer to the mulch mixture (Thomas Col. 1 line15). The language “indicates to a user environmental conditions of the soil where the mulch is place" is functional language/result of the use of the product that the product is "capable" of performing. The applicant has not claimed a specific type or special dye; applicant has not claimed what environmental conditions; applicant has not claimed how the dye works. Applicant has merely claimed a dye. The color from the dye is capable of indicating to the user that the mulch has been placed on a desired surface and that the environmental condition of the soil under that mulch is in a stage of fertilization since fertilizer is present in the mulch and over time with be absorbed into the soil. The mulch can also container seeds (Thomas Col. 1 line 15), so when the mulch with is placed in position and has seeds present it indicates to the under that the “environmental

condition" of that soil area is "planted". Applicant has not patentably distinguished over the prior art of record. It can also be argued that Thomas is silent on the dye indicates to a user the environmental conditions of the soil where the mulch is place. However, Lombard et al teaches a dye indicator i.e. a pH indicating dye for application to cellulosic material such as paper (Lombard Col. 2 line 1-5 and Col. 2 line 11-15; Col. 2 line 60-67). It would have been obvious to one of ordinary skill in the art to modify the teachings of Stevens with the teachings of Lombard at the time of the invention since the modification is merely an engineering design choice involving the selection of a known alternate dye selected for the known advantage of monitoring pH levels as taught by Lombard.

Claim 50 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,324,781 to Stevens in view of U.S. Patent No. 5,697,984 to Swatzina et al.

Regarding Claim 50, Stevens teaches a colored mulch product wherein the color, but is silent on the mulch product fades or disappears in response to a lack of fertilizer in the mulch. Stevens teaches the mulch product is made up of fertilizer (Stevens abstract last sentence), mulch plus fertilizer makes a mulch product. Swatzina teaches it is old and notoriously well-known to color fertilizer (e.g. red fertilizer Swatzina; Col. 2 line 31-33 and Example 4). One of ordinary skill in the art would be motivated to modify the teachings of Stevens with the teachings of Swatzina at the time of the invention for a desired aesthetic design. Stevens as modified by Swatzina, i.e. the selection of red

fertilizer, would inherently teach that as the red disappears or fades from the mulch the fertilizer is disappearing too.

Response to Arguments

Applicant's arguments filed 01 January 2009 have been fully considered but they are not persuasive.

Regarding Claims 26, 27, 38, applicant argues that Stevens teaches a mulch or seed *mat.* Applicant argues that applicant's present invention teaches against the use of a mat. However, the claim language does not reflect this teaching. The claims do not contain a negative recitation that excludes mats nor does the claim language claim that the material is in an alternate form then in a mat. Applicant's arguments seem contradictory since it seems that applicant's mulch product is chemically bonded since applicant claims a "binding agent".

Applicant argues that Stevens teaches a paper backing and does not make contact with the soil. However, Stevens teaches the addition of thin tissue paper layer may be incorporated, but it is not required. (Stevens Col. 2 line 16-19 and Col. 4 line 12 "if required"). Stevens even teaches perforations in the mat to facilitate the growth of roots for the seeds located in the mat (Stevens Col.2 line 30-35). Again, applicant's claim language does not exclude the use of a paper backing. The structure of Stevens with or without the paper backing does come in contact with the soil and applies fertilizers and seeds to the soil. The examiner maintains that the mat of Stevens can in fact indicate to a user environmental conditions e.g. planted and/or fertilized. Examiner maintains that the structural component "dye" of the apparatus claim limitation is

satisfied by the dye of Stevens since the dye of Stevens does perform in the similar manner as the claimed dye. The dye of Stevens indicates to a user environmental conditions of the soil where the mulch is placed i.e. planted and/or fertilized.

"Consisting essentially of" is not a completely closed format. Absent a clear indication in the specification or claims of what the basic and novel characteristics actually are "consisting essentially of" is construed as being equivalent to "comprising". The introduction of additional steps or components would have to materially change the characteristics of applicant's invention. The additions of Stevens do not materially affect the basic and novel characteristics of the claimed invention and the examiner construes "consisting essentially of" to be equivalent to "comprising" which is an open format.

Regarding claims 26, 27, 28, 29, 30, 38, 50, applicant argues that Stevens does not teach a mulch of shredded paper since Stevens teaches a mulch mat. Lombard teaches cellulosic material. The examiner completely disagrees with applicant's line of reasoning. Stevens teaches a mulch product made up of shredded paper (Stevens Col.3 line 35) just because it is formed into a mat shape using binding agent does not mean it is not made up of shredded paper. Lombard explicitly teaches that the cellulosic material is particles of paper (Lombard Col. 2 line 61-63). Lombard teaches the general knowledge that numerous pH-indicating dyes are known (Lombard Col. 3 line1). It is the examiner's position that the modification is merely the simple substation of one known dye for another known dye to obtain predictable results, to monitor the pH conditions of a paper based material as taught by Lombard.

Independent claims 26, 47, and 50 are all apparatus claims not method claims. It is the examiner's position that the dye taught by the prior art of record used in the above rejection is a known component of the apparatus and satisfies the apparatus claim limitation of a dye. Furthermore, the dye of the prior art of record satisfies the limitation of "indicating" to the user an environmental condition. As discussed in previous responses, this limitation is very broadly presented. Applicant hasn't claimed how the dye indicates or what the dye indicates. There are many ways the dye of Stevens and of Stevens modified "indicates" and one such example is that it indicates to a user that portion of soil has been planted and/or fertilized (Stevens abstract last sentence and Col. 6 line 35). Method claim 50 doesn't even explicitly claim that it is the dye that changes colors to indicate an environmental condition, but merely claims that the mulch changes colors.

Examiner maintains that Swatzina explicitly teaches the general knowledge that it is known to utilize a dye to color fertilizer and seeds (Swatzina Col.2 line 33).

The examiner maintains that the claim language presented by applicant is very broad in nature and all limitations of the broadly presented claims are satisfied by the teachings of the cited prior art of record.

The examiner reiterates the response to arguments that was presented in the previous office action since they are still pertinent to the current set of arguments presented by applicant. The examiner maintains that Stevens teaches a mulch product made up of fiber cellulose, binder, dye and fertilizer/additives (Stevens abstract; Col. 2

line 1-2; Col. 4 line 50; Col. 6 line 35). The language "indicates to a user environmental conditions of the soil where the mulch is place" is functional language/result of the use of the product that the product is "capable" of performing. The applicant has not claimed a specific type or special dye; applicant has not claimed what environmental conditions; applicant has not claimed how the dye works. Applicant has merely claimed a dye. The color from the dye is capable of indicating to the user that the mulch has been placed on a desired surface and that the environmental condition of the soil under that mulch is in a stage of fertilization since fertilizer is present in the mulch and over time will be absorbed into the soil. The mulch can also contain seeds (Stevens abstract), so when the mulch is placed in position and has seeds present it indicates to the user that the "environmental condition" of that soil area is "planted". Applicant has not patentably distinguished over the prior art of record.

Applicant's intentions maybe to claim that the present invention teaches that the mulch indicates the condition of the soil so that other things can be added to the soil to improve its environmental condition. However, applicant has not claimed this and independent claim 26 is a product claim not a method claim. The structural limitations claimed in claim 26 are all taught by Stevens.

The examiner reiterates, in response to applicant's argument that Stevens colors the mulch for appearance, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

Applicant argued that the Lombard reference is a visual indicator where urine is present and there is no teaching to combine the reference of Lombard and Steven. However, the examiner maintains that there is some teaching and motivation found both in the references and in the knowledge generally available to one of ordinary skill in the art. Stevens teaches a mulch of shredded paper. It is well known in both the art of plant husbandry and animal husbandry that shredded paper can be applied as mulch ground cover and as an animal feces collection cover i.e. litter. Therefore, both Stevens and Lombard teach a cellulosic substrate i.e. paper that receives a dye. Lombard is cited to teach that it is known to apply a pH-indicating dye solution to provide a visually detectable color transition at a particular pH level to a paper substrate (Lombard abstract). Stevens teaches it is known to dye paper (Stevens Col. 7 line 35). Examiner maintains that the modification is merely an engineering design choice involving the selection of a known alternate dye/additive applied to a paper substrate selected for the known advantage taught by Lombard of visually indicating pH levels. The modification is merely the simple substitution and/or combination of known prior art elements to obtain predictable results.

Lombard is reasonably pertinent to the particular problem with which applicant was concerned i.e. a means of providing a visual indicator of an environmental condition such as pH areas.

Lombard teaches an environmentally safe dye for application to fiber cellulosic base material. Lombard teaches the dye can change from a blue to red (Lombard abstract) which could be considered an aesthetic effect too. It can also be argued that

Stevens teaches a fertilizer application and animal urine is an old and notoriously well-known fertilizer component that is particularly desirable for application around plants that have a high nitrogen requirement. It can be argued that the motivation to combine the reference could also be to tell where an animal has urinated to identify the environmental condition of fertilization. In other words, it would have been obvious to modify/substitute the colored dye taught by Stevens with the dye of Lombard in order to identify animal urination as taught by Lombard to known an area has received nitrogen fertilization. Again, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Stevens teaches a cellulosic fiber base with a dye that gives it color; Lombard is cited as general knowledge in the art of a known alternate environmentally friendly dye that is well received by a cellulosic fiber base. It has been discussed in the above paragraphs that there is motivation found in the art to combine the teachings for the colored red/blue aesthetic effect taught by Lombard along with the ability to determine if an animal has urinated in a certain region i.e. released nitrogen components into an

environmental region. Stevens is concerned with promoting plant growth and providing fertilizer (Stevens Col. 1 line 12). Yanmar teaches general knowledge in the art that healthy plant growth requires monitoring the pH to know when more fertilizer is necessary. *The combination is merely the application of a known technique to a known device ready for improvement to yield predictable results*.

The examiner reiterates, applicant argues the combination of Stevens and Lombard does not teach changing colors of the mulch based on the condition of the soil. The mulch taught by Stevens as modified by the dye of Lombard teaches a cellulosic based paper, when the paper absorbs rain water or wicks up liquid from the soil the color of the mulch will change based on the dye indicator taught by Lombard. Applicant's language again is very broad and applicant has not explicitly claimed what "condition of the soil" is the soil dry, is the soil wet, does the soil need fertilizer? Conditions of the coil could merely be wet or dry and the chemicals added to the soil could merely be water added because the mulch color is indicating that the mulch and thus the soil is dry.

Yamada was cited to support the general knowledge in the art that additional fertilizer is adds to a growth medium when the pH of a nutrient solution exceeds a preset range. In this case, rain water could be viewed as the nutrient solution and when it hits the mulch taught by Stevens that contains the dye of Lombard and is absorbed into the soil, the color of the mulch will indicate if the rain water pH exceeds a preset range which means the soil condition pH is effected and if it requires fertilizer to adjust the pH which in turn effects the soil condition.

Thomas teaches a mulch product made by tumbling agglomeration with a dye, fertilizer and seeds (Thomas col. 1 line 15). A similar argument applied to support the combination teachings of Stevens above can be applied to support the teachings of Thomas. The language “indicates to a user environmental conditions of the soil where the mulch is place" is functional language/result of the use of the product that the product is "capable" of performing. The applicant has not claimed a specific type or special dye; applicant has not claimed what environmental conditions; applicant has not claimed how the dye works. Applicant has merely claimed a dye. The color from the dye is capable of indicating to the user that the mulch has been placed on a desired surface and that the environmental condition of the soil under that mulch is in a stage of fertilization since fertilizer is present in the mulch and over time will be absorbed into the soil. The mulch can also container seeds (Stevens abstract), so when the mulch with is placed in position and has seeds present it indicates to the under that the “environmental condition" of that soil area is “planted”. Applicant has not patentably distinguished over the prior art of record. Furthermore, Lombard teaches the dye can change from a blue to red (Lombard abstract) which could be considered an aesthetic effect too. It can also be argued that Thomas teaches fertilizer application and animal urine is an old and notoriously well-known fertilizer component that is particularly desirable for application around plants that have a high nitrogen requirement. One would be motivate to monitor urine applications via the dye taught by Lombard.

Regarding claim 50 applicant argues that to have the colored mulch product fade or disappear is against teaching the teachings of Stevens. Stevens teaches it is known

to use fertilizer in combination with mulch and Swatzina teaches it is known to dye fertilizer to make a red fertilizer (Swatzina Col. 2 line 31-33 and Example 4). Examiner maintains it would have been obvious to one of ordinary skill in the art to modify the teachings of Stevens with the red color fertilizer of Swatzina at the time of the invention as a means to identify a particular type/concentration of fertilizer and as a visual indicator that fertilizer has been applied. Over time and the fertilizer goes away the red color will inherently change, fade, disappear. Furthermore, the color of the paper portion taught by Stevens will inherently fade over time with exposure to sunlight. Since the mulch of Stevens contains fertilizer as the color of Stevens inherently fades with age it is also a visual indicator that the amount and strength of fertilizer has been depleted with age too.

Examiner maintains that applicant has not patentably distinguished over the teachings of the cited prior art of record.

Conclusion

The prior art made of record is considered pertinent to applicant's disclosure. English Translation, JP01262735A, Hisaya Yamada, Method for Adjusting the Concentration of a Hydroponic Solution, October 1989, 10 pages + title page.

This is a RCE of applicant's earlier Application No. 09/769,076. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL**

even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREA M. VALENTI whose telephone number is (571)272-6895. The examiner can normally be reached on 6:00am-4:30pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Andrea M. Valenti/
Primary Examiner, Art Unit 3643

09 February 2009